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12 December 1983

MEMORANDUM FOR:

[Redacted]

Information Review Officer, DA

FROM

: J. Kenneth McDonald
Chief, DCI History Staff

SUBJECT

: Memorandum for the Record on Meeting of 22 November 1983

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1. I'll attach a copy of the memorandum for the record I wrote on our meeting of 22 November 1983. Although it goes a little further than the draft copy I lent [Redacted] I got diverted by a report I had to submit to the DCI last week on another subject. In any event, my account is really superseded by your 23 November memorandum on "Historical Access," a copy of which you were good enough to send me.

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[Redacted]

J. Kenneth McDonald

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Attachment

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MEMORANDUM FOR THE RECORD

Subject: Meeting with [] DA/IRO, 10-11:30 am, 22 Nov. 1983

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1. I met [] at his office (7D10) and at his invitation to discuss the implications of:

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a. S. 1324, "The Intelligence Information Act of 1983," which the Senate passed just before it adjourned last week.

b. The related exchange of letters between Senator Durenberger and Mr. Casey.

[] gave me a copy of the 9 November 1983 SSCI Report on the bill.

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2. The Senate Committee took a special interest in the future release of CIA historical records, and the Casey-Durenberger letters at least potentially commit the Agency to "institute a new program of selective declassification review" of material of historical interest. Since this exchange of correspondence proposes a role in this for the CIA Historian, [] wanted to exchange views with me before the relevant DDA people meet to discuss this prospective program.

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3. Suggesting that the issue here is provision of special access to CIA records for historians, Chuck summarized the case of a [] who originally submitted an FOIA request for documents on any CIA activities [] in the late 1940s or early 1950s. [] has now run through every approach and every appeal without getting anything more than [] response. After the courts upheld this response under FOIA, [] applied to CIA under Executive Order 12356's provision (Sec. 4.3) for special access for historical researchers. The original court has upheld the Agency denial of this access, and the case is now in appeal. [] explained that while [] is confident that the three judge panel will again uphold CIA's denial of access, he also expects them to chastise the Agency for not following its announced procedures properly.

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4. I agreed that the [] case is relevant to the question of special access for historians, but noted that the Durenberger-Casey correspondence does not in fact propose any kind of special access or privileges for historians. Mr. Casey's letter rather offers a new program to review, declassify and release to the public documents of special interest and importance to historians. This program, as I understand it, would be entirely separate from our legal responsibilities to respond to individual requests for specific documents (or for special access to records) under the Freedom of Information Act. In fact, the proposed program appears analogous to the old "systematic review" program under Executive Order 12065 of 1978--with the difference that Mr. Casey's records review envisions the actual release to the public of documents after they have been declassified, which [] informed me was not the case under the old systematic review program..

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5. [] then turned to the questions of review, declassification and release of documents under the provisions of S. 1324 and its related correspondence. He suggested that CIA's records could be divided into three categories of records:

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- a. Administrative Records (organizational data, biographical information on DCIs, administrative procedures, etc.)
- b. Unclassified Published Data (FBIS reports, JPRS, published reports that go to Docex at Library of Congress, depository libraries, NTIS, etc. This includes a lot of OCR open publications: Chiefs of State, appearances of Soviet leaders, economic and energy indicators, etc.)
- c. "Operational Records" [] does not use this term in the way that S. 1324 uses it, but rather to mean everything not covered by the above two innocuous categories. Thus it includes most DDO, DDI and DDS&T substantive records. It would be clearer perhaps to call this category "All Other Records," with "operational records" and "finished intelligence" (referring mainly to DO and DDI records respectively) as the two principal categories within it.)

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6. [] suggested that the Agency should attempt to maximize the amount of material released in categories (a) and (b) above, and to publicize the availability of this open material. For all other records (category (c) above), he suggested that the Agency should respond to requests from historians outside as they arise, and in this way seek to minimize the declassification and release of material from these records.

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7. I agreed that the Agency should maximize its release of material in his categories (a) and (b), since these were the easiest and least threatening. I added, however, that most historians interested in intelligence would probably find the kind of administrative data and miscellaneous information in category (a) of only mild peripheral interest, while the stuff in category (b) has for the most part been unclassified and published for a long time. I explained my view that neither Congress nor the historical community is likely to consider increased availability of this kind of mostly open material as evidence of the "new program of selective declassification review" that the DCI proposes to commit us to.

8. This leaves (c) as the key category, and here I suggested that for the Agency to take a passive stance and wait for requests from outside before reviewing records for release and declassification would make us vulnerable on two fronts:

- a. It would not conform to the kind of program the DCI offered in his letter to Senator Durenberger.
- b. It would give the initiative to the requesters, and keep CIA in a continually defensive position, since we probably would have to deny most of what was requested.

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9. I suggested that we should rather take the initiative ourselves, as the DCI proposed in his 4 October letter to Senator Durenberger. There he stated that CIA professionals would make the decisions about what would prove releasable, and that historians would have to trust us "to make these professional judgments in good faith." As the DCI also noted, for CIA to maintain control over the workload, we must decide (after consulting with other government historians, NARS, etc.) what materials to review for possible declassification and release. I told [] that if CIA took the initiative and actually began releasing on a regular basis reasonable numbers of historical records of the sort the DCI describes, we could expect an important reduction in criticism--even possibly some praise--from Congress, the press and historians, and also--perhaps more importantly--a significant decline in the number of FOIA requests from historians. I showed [] the clipping from The Chronicle of Higher Education which--because of the DCI-Durenberger letters--actually gave the Senate Intelligence Committee's approval of S. 1324 the headline: "Senate Bill, Court Ruling May Open More Secret Records to Scholars." If the DCI, by his timely concession on the declassification of older records, can convince Congress and academia that the exemption of CIA operational records from the FOIA will actually produce more records for researchers, then I think we should all do everything possible to support him. And it is by no means clear that we can get the operational records exemption bill through at all without this CIA concession.

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10. We then talked about what kind of material might possibly be released. He explained that [] examples (in his memo of 20 Oct. 1983 to [] from the DARE computer list of material declassified under the old E.O. 12065 "systematic review" program had caused considerable outcry in various components. This, he explained, is because this material is "declassified" only in the most technical, unfunctional sense: that is, as an administrative response to the old Executive Order's "systematic review" requirement. According to [] CRD's instructions in carrying out this "declassification" did not provide for consultations with the originating components, as is the case in mandatory review and in individual FOIA requests. There was apparently never any idea that this "declassified" material would actually be released to the public, so that now the mere suggestion of the possibility has caused alarm and consternation in both DDO and DDI.

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J. Kenneth McDonald

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N.B. [] Memorandum for the Record dtd 23 Nov 83, Subj: Historical Access, which I received before finishing this memo, outlines his views more accurately and completely.

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